

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TIMOTHY L. KING,

Petitioner

v.

C-1-00-989

STATE OF OHIO,

Respondent

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 12); petitioner's Motion for Appointment of Counsel (doc. no. 16); petitioner's objections to the Report and Recommendation (doc. nos. 17 and 19) and petitioner's Motion to Extend Time to Reply to Court's Order (doc. no. 18). The Judge concluded that the petitioner failed to exhaust his ineffective assistance of appellate counsel claim and therefore recommended that the proceedings be stayed to permit the petitioner to exhaust his claims so that his Petition for Writ of Habeas Corpus could be heard by this Court on the merits. Petitioner's Motion to Extend Time to Reply (doc. no. 18) is moot as his objections (doc. no. 19) were timely filed.

Upon a *de novo* review of the record, especially in light of petitioner's objections, the Court finds that his contentions have either been adequately addressed and properly disposed of by the Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge that petitioner has failed to exhaust his ineffective assistance of appellate counsel claim which he asserts as cause for the procedural default of his claims.

Accordingly, the Court hereby **ADOPTS AND INCORPORATES BY REFERENCE** the Report and Recommendation of the United States Magistrate Judge (doc. no. 12) and the petition for a writ of

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habeas corpus is **STAYED AND ADMINISTRATIVELY TERMINATED ON THE ACTIVE DOCKET OF THIS COURT** pending petitioner's exhaustion of his Ohio remedies. The stay is conditioned upon petitioner's pursuing his state remedies within **THIRTY (30) DAYS** from the date of this Order and upon petitioner's filing a Motion to Reinstate the case on the Court's active docket within **THIRTY (30) DAYS** after exhausting his state remedies.

A certificate of appealability should not issue with respect to the constitutional claim because "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" as required under the first prong of the two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), which is applicable to this case because petitioner's claims for relief have been found to be barred from review on procedural grounds. **See also** 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Accordingly, a certificate of appealability shall not issue.

Pursuant to 28 U.S.C. §§ 1915(a), this Court certifies that an appeal from this Order would not be taken in good faith for purposes of granting petitioner leave to appeal *in forma pauperis*. **See Fed. R. App. 24(a); Kincade v. Sparkman**, 117 F.3d 949, 952 (1997).

Petitioner's Motion for Appoint of Counsel is **DENIED** because this case is stayed pending further action by Petitioner. Petitioner may renew this Motion after he has complied with this Order.

The case is **STAYED AND ADMINISTRATIVELY TERMINATED** on the active docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge

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United States District Court

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